

SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

November 8, 2011

Billy G. Johnson
SBI No. 00167
Sussex Correctional Institution
P.O. Box 500
Georgetown, DE 19947

RE: State of Delaware v. Billy G. Johnson
Def. ID No. 0611012659
Letter Opinion

Date Submitted: August 16, 2011

Dear Mr. Johnson:

This is my decision on your third Motion for Postconviction relief. You were charged with Delivery of Cocaine and Conspiracy in the Second Degree on November 27, 2006. These charges arose out of the delivery of cocaine by you and your girlfriend to an undercover police officer. You were convicted by a jury on both charges on November 1, 2008. The State of Delaware filed a motion to have you sentenced as an habitual offender pursuant to 11 *Del.C.* § 4214(a). I declared you an habitual offender and sentenced you to seven years at Supervision Level V, suspended after serving five years with probation to follow on November 14, 2008. The Supreme Court affirmed your convictions on July 13, 2009.¹ You filed your first Motion for Postconviction Relief on September 25, 2009. In your first motion, you argued, among other things, that your attorney was ineffective because he allowed you to be convicted of a non-existent charge. I denied your first Motion for Postconviction Relief on March 24, 2010. My denial was affirmed by the Delaware Supreme

¹ *State v. Johnson*, 976 A.2d 171 (TABLE), 2009 WL 2006881 (Del. July 13, 2009).

Court on September 21, 2010.² In your second Motion for Postconviction Relief, you argued, among other things, that I violated your constitutional rights when I added the offense of Liability for the Conduct of Another to the indictment. I denied your second Motion for Postconviction Relief on July 29, 2011.³ In your third Motion for Postconviction Relief, you once again argue that your attorney was ineffective. This time, you allege that your attorney was ineffective because he failed to challenge the State's action when it allegedly amended your indictment to include the offense of Liability for the Conduct of Another.⁴

Your third Motion for Postconviction Relief is barred by Superior Court Criminal Rule 61(i)(4) because the issue you now raise was previously adjudicated. You have previously and unsuccessfully raised the issue about this Court allowing the indictment to be amended to include the offense of Liability for the Conduct of Another. Liability for the Conduct of Another is merely a theory of liability that was applicable to your case, not an additional charge. You were indicted on charges of Delivery of Cocaine and Conspiracy in the Second Degree. It was the State's theory that you told your girlfriend to deliver the cocaine to a person that turned out to be an undercover police officer. Now you allege your attorney was ineffective for allowing the Court to instruct the jury on this theory of liability. While you attempt to transfer an alleged violation of your rights from the Court's action to that of your attorney, you have added nothing new to your allegation. Your allegation is the same one

² *Johnson v. State*, 5 A.3d 630 (Del. 2010)(TABLE), 2010 WL 3672859 (Del. Sept. 21, 2010).

³ *State v. Johnson*, 2011 WL 3557014 (Del. Super. July, 29, 2011).

⁴ 11 *Del.C.* § 271.

that you have raised previously and which I have previously denied. Your failure to comprehend the theory of liability does not relieve you of your guilt or make your attorney less effective.

In order to avoid the procedural bar of Rule 61(i)(4), you must demonstrate that the consideration of your claims is warranted in the “interest of justice.” The “interest of justice” exception is a narrow one. In order to invoke the “interest if justice” exception, you must show that “subsequent legal developments have revealed that the trial court lacked authority to convict or punish [you].”⁵ A factual development may also trigger the “interest of justice” exception. For example, in *Weedon v. State*⁶ several of the prosecution’s witnesses recanted their statements, thereby defeating the presumption that Weedon’s motion for postconviction relief was procedurally barred.⁷

You have not alleged anything in your motion that would invoke the “interest of justice” exception. Quite simply, your claims are repetitive, conclusory, and unsupported by the law or facts.

CONCLUSION

Your third Motion for Postconviction Relief is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

⁵ *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990).

⁶ 750 A.2d 521 (Del. 2000).

⁷ *Id.* at 528.